BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Developing a Unified Intercarrier and Compensation Regime	)))	CC Docket No. 01-92

COMMENTS OF THE
OKLAHOMA CORPORATION COMMISSION

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I. INTRODUCTION

The Oklahoma Corporation Commission ("Commission" or "OCC") respectfully submits these comments regarding the intercarrier compensation reform plan (the "Missoula Plan" or "the Plan") filed July 24, 2006, by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation in CC Docket No. 01-92.

II. OVERVIEW

The OCC expresses its appreciation to all of the parties for their contribution in the development of the Missoula Plan. The OCC believes that implementation of the Missoula Plan could result in many positive outcomes because the Plan attempts to address and take a step toward resolving many long-standing industry issues.

The Missoula Plan targets some of the primary challenges of intercarrier compensation reform in today's fractured telecom market. It reduces, but does not eliminate, regulatory distinctions; diminishes, but does not eliminate, the disparity in intercarrier charges and shifts a portion of network cost recovery from intercarrier charges to a combination of higher Subscriber Line Charges (SLCs) and a new federally administered program called the Restructure Mechanism (RM), although it is unclear if eligibility to seek recovery through the RM is limited to ILECs or on what basis CLECs may be eligible. The Plan calls for a uniform leveling of numerous inefficient compensation methodologies, thereby reducing arbitrage opportunities. Further, the Plan allows for the reduction of rates to be phased-in over many years in order to avoid "rate shock."

However, while the Plan offers many positive changes, it also presents many important challenges and potential negative outcomes. The Commission fully understands that appropriate regulations must address the problems introduced by today's rapidly changing telecommunications industry. But the OCC stresses that the FCC must take the time to appropriately address all of the relevant issues or risk the possibility of creating new problems. In these comments, the Commission will address both the strengths and shortcomings of the proposed Plan and discuss the potential impacts on Oklahoma's consumers.

III. STRENGTHS OF THE MISSOULA PLAN

Some issues addressed by the Plan are narrowly focused on state-specific issues, while others are broad in scope and aim to settle national, industry-wide issues. For example, all parties would appear to benefit from attempting to eliminate the distinction between traffic types to remove the increasingly difficult burden of categorizing traffic in an age when wireless and Internet communications are booming. The leap towards a concept of "a minute is a minute," whether a call is local, long distance, wireless, or Voice over Internet Protocol (VoIP), alleviates conflict among carriers in rating and collecting access charges. Removal of this obstacle should result in a reduction in overall litigation costs, thereby permitting the redirection of money previously spent on legal expenses for battles over "call type" and "who pays what." Additionally, competitive neutrality could be furthered as financial resources of smaller carriers are focused on improving technology, marketing, and consumer acquisition and retention, instead of being spent on intercarrier compensation disputes.

IV. GENERAL SHORTCOMINGS OF THE MISSOULA PLAN

In order to evaluate the Plan, it must be taken in its entirety. The interrelated nature of the various issues dictates that changes to the Plan be made judiciously and with great care so as not to lose current support or hinder progress toward its overall goals. Advocates of the Plan believe that the SLC is an appropriate vehicle to partially fund the Missoula Plan access reductions. However, consumers who typically use little long distance will see increased monthly costs and accrue little or no benefit under the Plan.

Further, the Plan lacks any mandate to require that carriers uniformly increase the SLC to offset revenue decreases resulting from reduced intercarrier compensation. The Plan allows increased SLC charges to be recovered flexibly by rate group or geographic area, resulting in opportunities to "game the system." The lack of a mandate for uniform application of SLC increases could allow some providers to undercut certain markets and it also enables providers to recover a portion of the SLC increases not passed to its consumers from sources funded by all subscribers nationwide. The presence of, and relatively easy access to, funding from the RM may serve to discourage some providers from seeking other avenues available to recover lost revenues or to reduce costs by increasing efficiency.

Although the Plan proposes to eliminate some traffic distinctions by introducing the "minute is a minute" concept, it does not completely transition to this methodology. Since the growth of wireless and VoIP traffic is still in its early stages, the problem of defining traffic types only stands to worsen unless a unified methodology, such as "a minute is a minute," is fully implemented.

Finally, the Plan appears to potentially obligate CLECs to incur additional costs associated with the relocation of the ILEC's "Edge," in situations in which ILECs and CLECs fail to negotiate interconnection. This creates a time and expense burden for CLECs that has the potential to be discriminatory.

V. THE TAKE-IT-OR-LEAVE-IT NATURE OF THE PLAN

The interrelated nature of the various issues dictates that only a select few changes may be made to the Plan so as not to lose its current support or achieve its overall goals. For example, some carriers under the Plan will require that funding be available to compensate for the lost access charge revenue. Thus, a mechanism like the RM should be available, at least temporarily. But the Plan offers no sunset provision for the RM, or a formal true-up mechanism for ensuring that support payments truly represent "net losses" for carriers, and the presence of and relative easy access to funding from the RM may serve to discourage some providers from seeking other avenues available to recover lost revenues or to reduce costs by increasing efficiency. Also, changing the proposed source of revenue recovery from the SLC to another mechanism that places all or most of the burden for the restructuring on those who cause the cost, such as the long distance consumers, could have far-reaching implications for cross-industry acceptance of the Plan.

VI. RETAIL RATES AND CONSUMER IMPACT

One of the themes of the Plan is that it creates a consumer benefit by lowering toll charges by reforming intercarrier compensation. The Plan gives telecom providers the opportunity to increase SLC rates up to $3.50 per line to help offset access charge reductions. Such an increase may, at the least, keep participating providers whole. However, consumers may see an increase in charges and even new assessments on their local telephone bills. The basis for a reduction in toll charges is the assumption that carriers will flow through to end users sufficient realized access savings via reduced toll charges. The problem is that there are no provisions in the Plan that mandate carriers to flow through access savings to their customers via reduced toll rates or any other method. The argument that "consumers will be the ultimate winners under the Missoula Plan" is a broad assumption without support.

Oklahoma consumers already pay an OUSF surcharge and an Oklahoma High Cost Fund Recovery Charge, in addition to federal programmatic assessments. The Missoula Plan proposes that these same consumers next be burdened with an increased SLC charge plus an increased USF charge, even though some consumers may realize no additional benefits. One of the reasons behind the proponents' support of the Missoula Plan is the assurance of equal pay for equal service. There should be no less expectation that consumers receive similar treatment. Before subscribers are asked to pay for yet another telecommunications fee for the Recovery Mechanism (RM), along with increased SLC charges, the Plan should include provisions to ensure that consumers will experience reductions in total charges at the same time that carriers experience reduced intercarrier compensation charges.

VII. FUNDING SOURCES

In Oklahoma, a streamlined mechanism exists, O.S. 17 §137(B)(2), under which rural local service providers may raise their base rates up to $2.00 per month once a year. If the Plan required carriers to look to other possible recovery mechanisms instead of relying solely on increases in the SLC, it is possible that some or all of these mechanisms could offset a portion of the proposed SLC increases while better serving competitive objectives.

A second concern for the OCC is the lack of clarity regarding equal treatment of carriers in terms of accessibility to the RM. Under Section VI.A1 of the Plan, it is clear that Track 1 price cap-carriers qualify for funding from the RM. However, Oklahoma's CLECs, considered to be Track 1 carriers by the Plan's definition, are not price-cap carriers. The Plan is unclear regarding whether Track 1, non price-cap carriers who have lost access revenues as a result of the Plan would be, or should be, eligible to withdraw funding from the RM. The Commission suggests clarification on this point.

A third issue in Oklahoma is the wording in O.S. 139.106(K)(1)(a), which states "in the event of a FCC order, rule or policy, the effect of which is to decrease the federal universal service fund revenue of an eligible local exchange telecommunications service provider, the eligible local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF." This legislation established the Oklahoma USF (OUSF). The Commission's concern is that the rural Oklahoma carriers may have no incentive to utilize the RM support and could opt to reduce access charges without raising their SLCs. Although the RM support would be calculated "as if" they had raised their SLCs to the cap, the rural LECs could forego those payments and draw the funding from the OUSF. This would obviously put a significant and unnecessary burden on Oklahomans who contribute to the state and federal funds. A potential enhancement to the Missoula Plan would be to require that a carrier's basic local service rates exceed its statewide average local service rates before allowing support payments from the RM.

VIII. IMPACT OF UNIVERSAL SERVICE REFORM

Lifeline/Link Up subscribers should not be affected by the Plan, as written, because Tier I providers will continue to waive the SLC, regardless of its level. However, the possibility exists that the interplay between the Plan and Universal Service reform may negatively impact consumers and/or the industry in Oklahoma, or the Universal Service Fund itself. It is impossible to quantify the overall impact on Lifeline/Link Up subscribers or consumers in high cost areas without knowledge of the ultimate decisions to be made regarding the nature and extent of Universal Service reform.

IX. POTENTIAL FOR UNILATERAL DESIGNATION OF "EDGE" LOCATION

The Plan creates a problem for CLECs in that it 1) "allows an ILEC to designate one or more locations in each LATA as its network 'Edge';"[1] 2) "allows carriers to reach mutual agreement for the interconnection of their networks"[2]; 3) states "Absent such mutual agreement, the default interconnection rules specified herein will apply;"[3] and 4) "creates the obligation for an interconnecting carrier to pay the terminating carrier for transport from the point of interconnection to the relevant Edge."[4] In essence, if an ILEC and CLEC fail to negotiate interconnection at a location otherwise allowed under FCC rules, the ILEC may unilaterally

[1] The Plan, Section III, page 41.
[2] Id.
[3] Id.
[4] Id.

locate or relocate its Edge at any allowed location of its choice, leaving the CLEC potentially obligated to incur additional costs.

X. ECONOMIC/COMPETITIVE IMPACTS AND ASSUMPTIONS OF THE MODEL

The Missoula Plan offers many economic assumptions but includes little explanation of several important aspects of the proposal, including the need for a long-term RM to fund an already heavily funded paradigm for long distance. It offers no plan for the RM to eventually be eliminated or "trued up," nor does it support the RM funding assumptions. Additionally, the Plan proposes defaults, (e.g., a terminating intercarrier compensation rate of $0.0005 per minute) without presenting supporting data or documentation regarding their genesis or appropriateness.

The Plan assumes that price is the main driver for long-distance (LD) consumption while "all else is held constant." The use of 2004 data allows for any needed updates and/or revisions while still providing a relatively recent baseline for the Model's assumptions. However, the model assumes that the 2004 levels are representative of access revenues over the long term and they will hold relatively constant in the future (i.e., the slope of the proposed line is zero, or horizontal at the 2004 level), but no explanation or support is provided for this assumption. It is quite possible that many of the Model assumptions may not survive scrutiny.

According to recent publications by the Congressional Budget Office[5] and the Bureau of Labor Statistics[6], wireline long distance service is losing market share (and corresponding revenues) to wireless providers in a trend that began in 1997. Due to its infancy, the trend line

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[5] *Financing Universal Telephone Service*, March 2005, pg. 9.
[6] "Cutting the cord: telecommunications employment shifts toward wireless", *Monthly Labor Review*, July 2006, pg. 31.

for VoIP service should be even more sharply positive than that for wireless. Neither technology's regression line for minutes of use (MOUs) nor revenues should be flat (slope equal to zero), and the possibility exists that a technology could decline during the life of the Plan. The OCC respectfully suggests that at least this assumption, and preferably all of the Plan's assumptions and defaults be evaluated more frequently than once after Phase IV; perhaps an annual or biannual reexamination would be more appropriate.

Because the specific purpose of the RM is to make whole those companies that do not fully recover their 2004 access revenues through increased SLC charges, in effect, the Missoula Plan creates an "insurance policy" to subsidize an already decreasing market for LD providers (i.e., regression line based on intercarrier compensation revenues would have a negative slope). Perhaps subsidization of a market with a negative demand curve might encourage investment into a shifting market paradigm. Under this assumption, it would seem prudent and likely lead to a more efficient market outcome to propose a sunset clause or true-up provisions in any cost recovery plan so as to ensure sufficient, but not excessive, RM support.

Another area in which the Missoula Plan fails to support the need for an "unchecked" RM is the trend for many rural ILECs to establish wireless spin-offs, which more easily allows for compensation for the shifting paradigms. A case in point is the government subsidy programs in agriculture in which farmers are paid to plant and then throw away their crops.

Another unfortunate facet of the Plan is that it presents a series of unsupported assumptions regarding competition and control of SLC increases. The Plan considers an "ideal" competitive market, however, little consideration is given to the defining characteristics of such an ideal market or to the question of whether a given level of competition will be sufficient to prevent SLC caps from being raised above the $10 level after the fourth step. The possibility that a predatory pricing scheme may appear in various markets is not addressed. After the fourth step, the Plan offers no guarantee that further increases in the SLC will not occur. The Plan will shift costs of reform to the local consumer by recovering less long distance network costs from long distance customers. This "partial bill and keep" aspect of the Plan does not necessarily lead to any consumer benefit. Finally, the Plan assumes that there will be substantial reductions in long distance rates, but there is no requirement for carriers to pass these lower rates on to consumers. The Plan merely suggests that competition will be fierce enough to allow for this pass through in savings to the consumer.

The Plan does not explain how creation of a new fund will function efficiently or at all, because the Plan fails to include a supervisory mechanism for the RM. The Plan also does not give supporting data for calculation of the level of the RM on any scale. The Plan creates a new support mechanism, and shifts the cost burden to low volume, long distance consumers. Furthermore, after the fourth step, market separation of the SLC charge will likely occur because the Plan allows flexibility in application of the SLC at different rates between groups or geographic areas, i.e., raise the rate in one area and not in another.

The Plan shows the demand elasticity for LD at -0.72, and for Wireless at -1.29. This means that for the more inelastic demand (wireless), large price fluctuations should have less dramatic effects on the quantity demanded. In the more elastic case (LD), small price changes can create large variances in demand. The greater elasticity in the LD market means that for LD consumers, a reasonably small increase in rates should be expected to have a more far-reaching effect on demand for the service than would be true in the wireless market. This explains the shift in subscribership from the LD market to the wireless market. The Plan assumes that demand in both markets is relatively constant but fails to support this assumption.

It is important to note that factors other than price also contribute to a consumer's choice to shift away from LD service. The elasticity differences show the shift from LD to wireless. The Plan assumes, as does demand theory, that price decreases will lead the consumer to use more LD, when all else is held constant. But in reality, LD rates are at historical lows and the opposite is occurring. This seems to suggest a possible flaw in the logic, i.e. something else must be causing the shift. For example, the above-mentioned studies show that consumers are shifting to wireless and/or VoIP technologies simultaneously with the decrease in demand for LD. The Plan fails to consider other variables that could lead to the decrease in demand for LD. The greater demand for the emerging technology is due more to shifts in consumer preferences than in price. Under the circumstances, is it appropriate to support a market for which consumers are choosing alternative preferences, or a service with a negative demand curve? The RM provides a potential award for wireline LD providers that provide a product that is declining in market demand. This creates economic inefficiency. The Commission agrees that all players should have a meaningful opportunity to participate in the market, but consumer choice should determine the winners. Otherwise, artificial support for an unwanted consumer service could result in a net economic loss to society, not a gain.

Although the Plan's proponents are correct that intercarrier compensation is broken, shifts in technologies have made wireline LD less attractive. Assuming the Plan's proposed surpluses result from an increased use of LD, it is possible that the incumbent's existing network might be advantaged. For example, a large non-rural ILEC might receive significant revenue gain from the Plan through increased transport charges and the presence of a market "cushion" in the form of a wireless affiliate coupled with compensation from the RM and state and federal USF funds.

XI. CONCLUSION

The Missoula Plan presents a good "first step" for accomplishing access reform. However, many of the assumptions included in the Plan have not been fully analyzed, and in many cases, little or no supporting data has been provided. Thus, the OCC proposes that the Plan's assumptions and defaults be evaluated more frequently than only once and that being after Phase IV, perhaps even annually or biannually. As presented, the Plan is a take-it-or-leave-it product, with the implication that any significant changes could topple the delicate balance of the cross-industry, but not all-inclusive support that exists. The Plan's flexibility also allows a real possibility for market exploitation. Its dependence for funding on increased SLC charges will disproportionately affect consumers, forcing many consumers to pay more without receiving additional benefits. For these reasons, the Commission questions the appropriateness of the SLC as the primary avenue for funding the proposed reforms. Finally, the RM presents the industry with another set of support mechanisms, without well-defined checks and balances to limit, offset, reduce or eliminate recovery over time. The OCC respectfully submits that although the Missoula Plan presents a solid starting point for access charge reform, careful consideration should be given to the concerns expressed during the comment period.

Respectfully submitted,

OKLAHOMA CORPORATION COMMISSION

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